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mated in the last case that a blank piece of paper signed and sealed is utterly nugatory.

It is proper to add that all the cases agree that if the instrument under seal be filled up *in the presence* of the grantor and with his consent, it will be binding upon him. The agent is then considered merely his hand in filling in the blanks.

If in the conflict of authorities, the expression of an individual opinion be permitted,—the common law rule seems to us too technical to be suited to our

modern society. The only substantial reasons in its favor are founded upon the danger of perjury and the uncertainty of parol testimony. These disadvantages would not exist in the case of implied authority, and could be readily obviated by requiring express authority to be in writing. When so many incidents to the seal have been abolished, no valid reason is perceived for retaining one so apt to screen fraud and injustice.

R. S. H.

Supreme Court of Errors of Connecticut.

ATWOOD, TRUSTEE, v. HOLCOMB.

A father, acting in good faith, may make a valid gift to his minor son of his time and future earnings, although insolvent at the time.

TROVER; brought to the Court of Common Pleas of Hartford county, and tried on the general issue, with notice, closed to the court. Judgment for the plaintiff and motion for a new trial by the defendants.

On March 23d 1867, the plaintiff was indebted to the defendant Holcomb and was insolvent. He had a son Arthur, seventeen years of age, and on that day gave him a letter of emancipation, by which he agreed that his services and future earnings, which then belonged to the plaintiff, should belong thereafter to the son. There was no consideration whatever for this gift. In September of that year Arthur negotiated for the purchase of a colt with one Hays, who completed the sale with the plaintiff's wife, and conveyed the title to her in the same month. She paid therefor \$5 of her own, and Arthur thereafter caused \$22.50 of his wages, earned after the date of the letter of emancipation, to be paid as part payment for the colt. This colt was afterwards exchanged for a horse. The defendants caused this horse to be attached in a suit against the plaintiff, and the plaintiff brought trover as trustee for his wife.

Perkins (with whom was *W. C. Case*), in support of the motion.—It is well settled that the policy of our law favors an appropriation of *all* available means of the debtor, of every kind, for

the payment of his debts: *Ensworth v. Davenport*, 9 Conn. 393; *Remington v. Cady*, 10 Id. 47; *Davenport v. Lacon*, 17 Id. 281; *Bray v. Wallingford*, 20 Id. 419. If the son had already worked, and wages were due to the father, there can be no question that a gift of them would be void as against existing creditors. Why should any distinction be made between a gift of wages due, and those to become due? The father has a *right* to the wages of his minor child. They are just as much his as his own wages, or those of his wife, as much as the avails of the labor of his hired man, his oxen or his horses. Reeve in his treatise on Domestic Relations says (p. 423), "The father can no more give to the child the avails of his service to the prejudice of his creditors, than he can any other property." *Chase v. Elkins*, 2 Vt. 290; *Bray v. Wheeler*, 29 Id. 514; *Jenney v. Alden*, 12 Mass. 375; *Winchester v. Ried*, 8 Jones (Law) 377.

Goodman, contra, cited *Welton v. Morse*, 6 Conn. 547; *Torrington v. Norwich*, 21 Id. 543, 547; Reeve's Dom. Rel. 422, note; *Jenison v. Graves*, 2 Blackf. 440; *Chase v. Elkins*, 2 Vt. 290; *Chase v. Smith*, 5 Id. 566; *Rush v. Vought*, 55 Penna. St. R. 437; *McCloskey v. Cyphert*, 27 Id. 220; *Holdship v. Patterson*, 7 Watts 547; *Bray v. Wheeler*, 29 Vt. 514; *Nightingale v. Withington*, 15 Mass. 272, 275; *Corey v. Corey*, 19 Pick. 29.

The opinion of the court was delivered by

SEYMOUR, J.—Upon the facts the defendants' counsel make the question—Was the gift of the father to the son, of the avails of his labor thereafter, a valid one as against those who were creditors of the father at the time? On examining the record it does not distinctly appear that the debt of the defendant Holcomb was prior in time to the letter of emancipation, but from what was said by counsel in the discussion we suppose in truth it was prior, and shall decide the case upon that as being the fact. In regard to the insolvency of Mr. Atwood, the father, the finding is that at the time of the attachment he was, and for many years previous had been, shiftless and unable to pay his debts.

If the obligation of a minor child to labor for his father is in the nature of an ordinary debt and properly a thing in action like a bond or promissory note, the argument of the defendant would have full force, that the father must be just before he is generous, and could no more forgive to his son the obligation of personal ser-

vice, to the prejudice of creditors. than he could give away a valuable bond. But there are differences between an ordinary debt and a child's obligation to serve his father. If Mr. Atwood had died insolvent on the day of the date of the letter of emancipation, the law itself would have done for the son what the father attempted to do. The law would have given the son his time, and his earnings would thereafter have been his own. Neither the defendant nor any other creditor of the father would have any claim on the son that he should labor for the benefit of his father's estate. This duty of service is not assets like a bond in the hands of an administrator for payment of debts, nor for any purpose. So too in case of bankruptcy it is clear that the father's right to his children's services does not pass as assets for the benefit of creditors to the assignee in bankruptcy. The son, therefore, is not in law regarded as an ordinary debtor to his father, nor is the father's right to the son's services regarded in law as mere property either in possession or in action. The right and the duty are in the main personal, and are founded on the intimate relation that during minority must necessarily exist between the parties. The age of twenty-one years is fixed by law as the utmost period of the relation, but it may be terminated before that period by the mutual agreement of the parties, so as to put an end to the duty of personal service. This was decided in *Welton v. Morse*, 6 Conn. 547. The law wisely permits the father to consult the genius, capacity and inclination of his son, and if he thinks it best that his child should be stimulated to industry by receiving the fruit of his own labor or best that he should before twenty-one be put upon his own resources to earn a living, he may by law anticipate the usual period of majority and release to him all claim upon his earnings.

The father by statute, with the minor's consent, may bind his son as an apprentice to learn a useful trade, thus transferring to the master the right of service. And in such case the practice is to give to the minor child the whole benefit of his labor, either in instruction or in board and clothing, and if a sum of money is to be paid at the end of the apprenticeship by the master it is usual and we suppose universal to stipulate for its payment to the son himself and not to the father: Chamberlin's Commercial Law 377, 846. Now by such indentures of apprenticeship the father relinquishes to the son the benefit of the son's service, and the

father's creditors may be affected by it as much as the creditors of Mr. Atwood are affected by the emancipation in the case before us. But we think the law does not permit creditors to control the father's freedom in the important matter of dealing with his son's time and employment as the best interest of his son may seem to require. By the law of nature every person is entitled to the fruit of his own labor and skill. Municipal law, which gives to the father the earnings of his children during their minority, does not intend to contravene this law of nature, but merely to modify it, giving to the father the control of his children's earnings as the means of providing for their maintenance and education, under the idea that the father is more capable than the child to direct his industry and supply his wants, and under the further idea that the parent will use his power with paternal regard for the best interests of his child, and not as a mere means of profit to himself. Hence, it is settled law that if the father abandons the child and leaves him to provide for himself, the child becomes entitled to his earnings as a means of support, and the father has no claim upon them to reimburse himself for past expenses incurred in infancy: *Nightingale v. Withington*, 15 Mass. 272. So too by marrying during minority a daughter is freed from all legal obligation to labor for her father.

If therefore by mutual consent a child is emancipated before arriving at the age of twenty-one, and is left to provide for himself under an agreement that his time shall be his own, we think the father's creditors have no ground to complain of the arrangement. The father relinquishes nothing which was intended as a source of profit to him, he merely remits his son to his natural rights at an earlier period than that fixed by law. If however such arrangement is merely colorable—a mere sham to protect the son's wages from creditors, while as between the parties the father still is to control and have the benefit of them, then the transaction is void as against creditors. So too after wages are actually earned before emancipation, the gift of such wages or their proceeds to the son would be subject to the ordinary rules which govern voluntary conveyances of property. Probably Judge Reeve had such a case in his mind when he penned the sentence in his valuable treatise on domestic relations on which the defendants rely. The case before us relates to wages earned by the son after he had been emancipated, after he had reason to suppose that he

was laboring for himself under an arrangement which appears to have been proper under the circumstances and made in good faith.

The father was shiftless and unable to pay his debts. Such instances are unfortunately too common, where the head of the family fails to provide comfortably for the household and is discouraged by the burden of debt from attempting much to improve his own condition or that of his family. In this state of things a son seventeen years of age proposes to start for himself and with his own earnings to provide his own food, raiment and education. The father consents, and the son by the labor of his own hands earns a few dollars, and we are called on to decide between the son's title and that of his father's creditors to these earnings. In a case somewhat analogous, of the wife's earnings, which at common law belong to the husband, our statutes have carefully protected the proceeds of her labor from her husband's creditors and secured them to her own use. These statutes proceed upon the same principle of natural law and justice which we feel bound to apply to a child's wages, in cases like the present. Those statutes however go much further in the protection of the wife's earnings than we are called on to go in favor of a child's, for as already stated the son's wages earned before emancipation are regarded as his father's property, and of course like other property are liable to attachment.

We have carefully examined the authorities cited by the counsel for the defendants, but we find no case which favors their claim, and though perhaps no case has gone the full length claimed by the plaintiff, yet the language of the judges in Massachusetts, Vermont and Pennsylvania is in conformity with the views which we have expressed; and both on principle and authority we think the decision of the Court of Common Pleas was correct, and we therefore advise no new trial.

The questions arising, in the administration of the law, as to the relative rights and duties of parents and children, are always of great interest in states and communities of high advancement in Christian culture and civilization; and many of them are attended with doubt and difficulty. And it must be confessed, that these questions are undergoing considerable changes in this country at the present time, and have been for many years. The pecuniary advantages or disadvantages naturally to be expected to arise in consequence of a considerably numerous offspring, will vary much with circumstances, but especially with the modes of living and the demands of expenditure for education, dress and amuse-

ments. The demand in these respects has changed immensely, in this country, in the last half century. In the early years of the present century, in most parts of the United States, a numerous family of boys was regarded as a kind of property, a sort of productive estate, from which the father might surely count upon deriving considerable revenue, towards the payment of debts or the improvement of his estate and condition in life. At that period it was natural to find overwary or overgreedy creditors looking to such sources for the payment of their dues. And where the father, as sometimes occurred, relinquished his claim upon the time and labor of his sons, in order the more completely to enable such sons to apply their earnings toward the comfortable support and education of the other members of the family, it no doubt had very much the appearance of an evasion of the just claims of creditors for advancements, sometimes, no doubt, made for the support or education of these same sons, at a period before they were able to earn much towards either their own, or the support of the family. Hence, in many of the states, from time to time, questions have been brought before the courts, in regard to the exact nature of the father's claim upon the labor of his sons, and how far it partook of the nature of property in which creditors could claim rights of any kind. Thus in Vermont, we find the early case of *Chase v. Elkins*, 2 Vt. 290, where the right of the father to sell the son his time is indeed recognised; but the learned judge, in giving the opinion of the court, seems to regard the father's claim upon his son's labor till he comes of age, as in the nature of "property, he has the same right to dispose of, in good faith, as he has of other property." This right to sell the son his time is placed upon the ground, that it is necessary in order "that he may consult the genius, capacity and inclination of his son," in regard to his permanent occu-

pation in life, and thus enable him to pursue either some occupation of labor or some of the liberal arts according to his capacity or inclination. And the same doctrine is again affirmed by the same court, in *Chase v. Smith*, 5 Vt. 556. But here the right of the father is asserted in more unqualified terms; for instance, he may either sell or give his son his time, "and after that the son is entitled to his own earnings," not only as against the father, but his creditors also. And the right of the father, as against his creditors, to give his son his time and future earnings is fully recognised in *Tillotson v. McBrillis*, 11 Vt. 477, *Bray v. Wheeler*, 29 Vt. 514, which he could not do if it were property belonging to the father. So it seems to have been held at an early day in Massachusetts, that if the father abandons the son and fails to provide for him, during his minority, he cannot afterwards claim the benefit of his earnings: *Nightingale v. Withington*, 15 Mass. 272; *Corey v. Corey*, 19 Pick. 29. So too it was held in New Hampshire, in *Hall v. Hall*, 44 N. H. 293, that the father may release to the son all claim upon his earnings, and that thereafter the father may employ him and pay him wages. And where the father becomes a pauper the town will have no claim upon the earnings of his children, unless by statutory provision: *Jenness v. Emerson*, 15 N. H. 486. The general doctrine that the father may relinquish all claim to his son's time and labor, without infringing any right of his creditors, is generally, if not universally, recognised throughout the country. Schouler Dom. Rel. 341; *Campbell v. Cooper*, 34 N. H. 49; *Cloud v. Hamilton*, 11 Humph. 104; *Armstrong v. McDonald*, 10 Barb. 300; *Snediker v. Everingham*, 3 Dutch. 143; *Steel v. Steel*, 12 Penna. St. 64; and numerous other cases might be cited.

There is no doubt in regard to the soundness of the decision in the principal case, and the grounds of the doctrine

are very fully brought out in the opinion. The wonder is, perhaps, that, at this late day, any one should continue so old-fashioned in his views as to consider the father's right to his children's services in the light of property, which his creditors might treat as security for their claims. In the wonderful advance in the expense of living and the education of children, the father with a numerous family is regarded more in the nature of an incumbered debtor, than of one possessing large resources for future advancement. The demands for education have increased, at the very least, ten fold, within fifty years, and the expense of the same degree of culture has advanced almost in the same ratio. At a time when every town, or city high school, affords the means of acquiring almost the same

extent of education which was afforded by the colleges at that time, we should scarcely expect children to find much time to labor for the benefit of the family.

The truth unquestionably is that any such claim, at any time, must have resulted from the narrowness of the means of support and education afforded by the country. How far we may now be travelling toward an opposite extreme we need not stop to inquire. It will be sufficient for the present purpose to be able to see clearly that there exists no reason for the claim, that parents have any pecuniary interest in the earnings of their children, which they may not gratuitously relinquish without infringing any rights of creditors, present or prospective.

I. F. R.

City Court of Louisville, Kentucky.

CITY OF LOUISVILLE v. JEFF. BROWN.

An Act of the Legislature authorizing the city of Louisville to compel every attorney practising therein to pay a license of ten dollars per annum, and subjecting them to a fine in case of refusal, is unconstitutional and void as to attorneys admitted to practice before the passage of the Act.

An attorney and counsellor at law is vested with an *official right* which cannot be trammelled in any way except for official and professional misconduct.

THIS case was submitted upon the following agreed facts: The defendant was licensed in 1843, to practise as an attorney and counsellor at law, in all the Courts of this commonwealth; and under and by the authority of such license was then sworn into office, and has been ever since, and is now, practising his said profession. It was further agreed, that he had not taken out any license from the Inspector of License in the city of Louisville.

The Legislature of Kentucky by an act, approved March 3d 1870, authorized the General Council, by ordinance, to require licenses of each attorney and counsellor at law, with adequate penalties for doing business without the required license. And the General Council, in pursuance thereto, passed an ordinance, "That each and every lawyer practising in the city of Louisville